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File No. O Urban Tax 47

Legal DEPARTMENT
"A" BRANCH

Subject:—

Opinions relating to Urban Immoveable Property Tax

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File No. O Urban Tax /47

Std. Sect. Slip 4A 15 6.

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S.I./10/8/56. 6c.

DS 1415

Submitted.

The trustees of the Seth Mancklal Gordhandas Dasha Shrimali Arogya Bhawan at Ghatkopar have filed Municipal Appeal No.25/N of 1946 in the Court of the Presidency Magistrate at Kurlaagainst the recovery of the urban immoveable property tax in respect of the above arogya Bhawan bearing House No.76/B of A ward, Ghatkopar. The building is a sanitariam advantage whereof is taken by all the Dasha Shrimali Banias who resort to it for change of air and are allotted the furnished blocks therein under the rules and regulationf framed by the trustees. A nominal charge of Rs.5/- was recovered from the occupant of each of the blocks up to March 1944, which has since been increased to Rs.8/- per month to meet the wear and tear and user of the furniture. utensils, household article and to meet sanitary cess, tax and pay of gardner and cleaner and water charges. The trustees contend that the building is devoted exclusively to charitable purposes and that no rent is recovered in respect of the occupation of the blocks and that consequently it should be exempted from tax under the Bombay Finance Act, 1932. The Collector of B.S.D. therefore seeks the advice of the R.L.A. on the question whether the recovery of Rs.8/- per month from the occupants of the blocks in the Sanitorium can be deemed to be rent within the meaning of the expression in Explanation (1) (b) to section 23 of the Bombay Finance Act, 1932 and whether the matter should be compromised.

2. Section 22 of the Bombay Finance Act, 1932, as introduced by Bombay Act No.IV of 1939 provides that there shall, subject the provisions of s. 23, be levied and paid to the Provincial Govt. a tax on buildings and lands (called the Urban Immoveable Property tax) at 7 per cent of the annual letting value of such buildings or lands. Clause (a) of section 23 provides that the U.I.P. tax shall not be leviable in respect of buildings and lands or portions thereof exclusively occupied for charitable purposes. Under Explanation

(1) (b) to that section for the purposes of section 23 buildings and lands or portions thereof in respect of which rent is derived whether rent is or is not applied exclusively to religious or charitable purposes shall not be deemed to be exclusively occupied for charitable purposes. It is true that for the occupation of each of the blocks in the sanitarium the occupant is charged a sum of Rs.8/- per month whic h is would be seen from the receipt at p.5 ante is recovered on account of unkeep and cleaning charges of the blocks according to the rules made by the trustees. The Asstt. Govt. Pleader Thana and E.S.D. in his letter at p.3 ante states that the charge of Rs.8/- per month is nominal. If so it would not appear to be rent . The expression "rent" as defined in the Concise Oxford Dictionery means "tenants" periodical payment to owner or landlord for use of land or house or room". The payment of rent suggests the creation of the relation of landlord and tenant (cf. the observations of Kajji J. in P.W.Monie vs. The Rev. Robert Scott. XX Bom.L.R.839 at p.848). The receipt at p.5 ante refers to the rules and regulations framed by the trustees. Unless these rules are seen it would not be possible to say definitely whether the relation of landlord and tenant is or is not created. Perhaps before expressing a definite opinion the Collector may be asked to forward a copy of these rules.

DVD
28/12.

A.S.

The facts are stated in letterfrom the Assistant Govt. Pleader, Thana, No.1009, dated 20-11-1946 and in para.1 of the above note. It is clear that the building known as the "Seth Vaneklal Gordhandas, Dash Shrimali, Arogya Bhuvan" is used as a Sanitarium by all the Dash Shrimali Banias. Anominal charge of Rs.8/- per month is levied from the occupant of each block to meet the wear tear pp. 3-4 ante.

return in money or kind for the enjoyment of specific property held by one person from or under another. (I.L.R.22 Mad.p.149). A rent is compensation paid for the use of the property. It is a profit in money. From the receipt issued by the Trustees to the occupants, it is abundantly clear that in accordance with the rules framed by the Trustees the charge of Rs.8/- is levied for the services rendered and not by way of gain or profit for the use or occupation of the block. In this connection, it is pertinent to note the words " in the receipt. The Asstt. Govt. Pleader states that "the Trustees have been able to show from their accounts that these Rs.8/- received from the occupants of blocks are quite insufficient and inadequate for the upkeep of the property and payment of water-charges, sanitary cess and electric charges etc." In view of this it cannot be said that the sum of Rs.8/- recovered from the occupants is by way of rent or profit.

See p.5 ante

p.3 ante

It however, appears that in Regular Civil Suit No. 230/1937 the First Class sub-Judge, Thana, declared that the property in suit is a charitable property. In view of the finding of the Court that the property is a charitable property, it cannot but be held that it is exempt from payment of urban immoveable property tax under clause (1) of section 23 of the Bombay Finance Act, 1932, and the question at issue does not appear to survive.

Vide p.3 ante

In the circumstances, it is advisable to accept the suggestion of the Asstt. Govt. Pleader, Thana, to compromise the matter. He may be instructed to compromise the matter in consultation with the Ghatkopar-Kirol

and use of the furniture, utensils, house-hold articles, and to meet the sanitary cess tax and pay of the gardener, cleaner etc. and charges for water supplied by meter. The Board of Trustees of the said institution has filed an appeal in the Court of the Presidency Magistrate, Kurla against the order of the Ghatkopar-Kirol Municipality imposing urban immoveable property-tax in respect of the said building.

The question for R.L.A's consideration is whether the charge of Rs,8/- per month levied from each of the occupants can be considered as rent within the meaning of Explanation (1) (b) to section 23 of the Bombay Finance Act, 1932.

Section 23 of the Bombay Finance Act, 1932, provides that the Urban Immoveable Property Tax shallnot be leviable in respect of the following:-

(a) buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes;

(b), (c), (d), (e)

'Explanation' provides that for the purposes of this section --

(1) the following buildings and lands or portions thereof shall not be deemed to be exclusively occupied for public worship, or for charitable purposes, namely:-

(a) x x x x x x

(b) that in respect of which rent is derived, whether rent is or is not applied exclusively to religious or charitable purposes.

The term "rent" means whatever is lawfully payable by a tenant to his landlord on account of the use or occupation of the land held by the tenant. it is a

Municipality.

E.P.B.
6/1

A.L.R. I agree. F.D. may see.

R.T.K.
7/1

R.L.A. Yes. D.V.Vyas
9/1

U.R. to F.D. No.291, dated 10-1-47.

S.I./10/5/56. 4c.